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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,870	10/14/2003	Jason R. Melvin	P-US-TN 09374	4800
7590	10/26/2004		EXAMINER	NGUYEN, DUNG V
Michael P. Leary, Group Patent Counsel Black & Decker Corporation Mail Stop TW199 701 E. Joppa Rd Towson, MD 21286			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 10/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/684,870	MELVIN ET AL.	
	Examiner	Art Unit	
	Dung V Nguyen	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9, 13 and 14 is/are rejected.
- 7) Claim(s) 10-12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergler (USPN 3,431,686). Bergler discloses a sanding frame for supporting a portable powered sander 1 with a movable abrasive surface 5 comprising a base 9 having a first surface and a second surface and the base 9 substantially in a plane, a leg 42 selectively connectable to the base 9 for supporting the base 9 in an orientation wherein the plane of the base 9 is planar parallel to the ground, a rod assembly pivotably connected to the base 9 for movably supporting the sander 1, an adjustment mechanism 12 connected to the base 9 and to the rod assembly for pivoting the rod assembly, wherein the rod assembly includes a recess defined by the base 9, a bearing 17 located in the recess and defining a bore, a pivot pin 15 having a first end and second end, the first end rotateably supported in the bore, a pivot arm 10 having a first end and a second end, the first end connected to the second end of the pivot pin 15, a rod 13 connected to the second end of the pivot arm 10, wherein the rod 13 is pivotable out of the plane of the base 9, a spring 19 for biasing the rod 13 towards the plane of the base 9, wherein the adjustment mechanism 12 includes a yoke 26 connected to the base 9 and defining a bore, a threaded rod 21 having a first end and second end,

extending through the bore of the yoke 26, a collar 22 connected to the rod assembly and to the first end of the rod 21, a knob 32 engaged to the rod 21 for drawing the rod 21 through the yoke 26, a spring 27 coaxial with the rod 21. Bergler also inherently discloses a method for converting a sanding frame into a stand for a portable sander 1 with a movable abrasive surface comprising providing a sanding frame 9 and a leg 42, mounting the sander 1 to the frame 9, attaching the leg 42 to the sander frame 9 so that the movable abrasive surface 5 of the sander 1 is exposed for access (note Fig. 1-9, col. 2, line 39 to col. 4, line 44).

Allowable Subject Matter

3. Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed on 4 October 2004 have been fully considered but they are not persuasive. In response to applicant's argument that leg 42 in Bergler '868 is not selectively connectable to base 9, however, applicant does not clearly define the term "selectively connectable". MPEP 2111 states that claims must be given their broadest reasonable interpretation, therefore, the term "selectively connectable" can be interpreted as choose to connect to a base. In response to applicant's argument that the legs 42 and 44 in the Figs. 8 and 9 of Bergler '868 do not alter the orientation of the sander 1, the claimed invention does not recite any alteration of orientation of the sander. Moreover, MPEP 2112.02 states that when the prior art device is the same as

a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. Bergler '868 discloses a portable sander attached to a frame having legs, therefore, Bergler '868 inherently discloses a method of converting the frame to a stand for sanding a surface or particularly a floor corner.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung V Nguyen whose telephone number is 703-305-0036. The examiner can normally be reached on M-F, 6:30-3:00.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J Hail can be reached on 703-308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DVN
October 23, 2004

Dung Van Nguyen
DUNG VAN NGUYEN
PRIMARY EXAMINER